

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

RODRIGO ULLOA MARTINEZ,

Petitioner,

v.

Case No. 3:17cv793-RV-CJK

WARDEN, FCC-Yazoo City,

Respondent.

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REPORT AND RECOMMENDATION

This cause is before the court upon a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241. (Docs. 1, 2). Petitioner is serving a prison sentence imposed by the United States District Court for the Northern District of Florida in Case No. 3:05cr87-RV-MD. He is currently confined at the federal correctional institution in Yazoo City, Mississippi. In this action, petitioner seeks to challenge the validity of his 30-year sentence for possession of a firearm (a machine gun) during and in furtherance of a drug trafficking crime. He argues he “is entitled to § 2241 relief under the savings clause of 28 U.S.C. § 2255(e) and the Supreme Court’s decision in U.S. v. O’Brien, 560 U.S. 218 (2010).”^{*} (Doc. 2, p. 9).

^{*} Petitioner raised a similar argument in this court in 2010. The court denied relief, finding “[a]ll of the standards of *United States v. O’Brien*, 130 S. Ct. 2169 (2010) were met by the jury’s verdict in this case.” See N.D. Fla. Case No. 3:05cr87-RV-MD, Docs. 206-208.

Because petitioner is not currently incarcerated in the Northern District of Florida, this court lacks jurisdiction over the habeas petition. “Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004); *see also Diaz v. United States*, 580 F. App’x 716, 717 (2014) (“A § 2241 petition by a federal prisoner must be brought in the district where the inmate is incarcerated.”) (*citing Rumsfeld*, 542 U.S. at 443-44). Although petitioner named the warden of FCC-Yazoo City as respondent, he did not file the petition in Mississippi. The undersigned, therefore, recommends that the petition be transferred to the Southern District of Mississippi, petitioner’s current district of confinement.

Accordingly, it is respectfully RECOMMENDED:

That the clerk of court transfer this case to the United States District Court for the Southern District of Mississippi, and close the file in this case.

At Pensacola, Florida, this 7th day of November, 2017.

/s/ *Charles J. Kahn, Jr.*
CHARLES J. KAHN, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

Objections to these proposed findings and recommendations may be filed within fourteen (14) days after being served a copy thereof. Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control. A copy of objections shall be served upon the Magistrate Judge and all other parties. A party failing to object to a Magistrate Judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions. *See* U.S. Ct. of App. 11th Cir. Rule 3-1; 28 U.S.C. § 636.